

Cottonwood

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MODOC

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CHARLES M. OLIVER,

Plaintiff,

vs.

ISAAC ROBNETT, CHARLEY C. LARKIN,
ELLEN LARKIN, GROVER C. DICK,
ANNIE RICE, THOMAS M. DICK, JOHN
DICK, RHESA DICK and SADIE M.
KELLER, MORRIS DICK,

Defendants.

No. 2344

JUDGMENT AND DECREE

GEORGE H. OWENS, IDA L. OWENS,
MABEL E. PERRY, as executrix of
the estate of J. F. Owens,
deceased, and THOMAS E. PERRY,
and MABEL E. PERRY, husband and
wife,

Intervenors

H. A. FLEMING and W. S. FLEMING,

Intervenors.

The above entitled cause having been previously tried before the
above entitled Court on May 17, 1920, judgment having been previously entered
on October 5, 1920, appeal having been taken to the Supreme Court of the
State of California, said Supreme Court having reversed said Judgment on
November 3, 1922 and having ordered said cause back to this Court for a new
trial; Ida L. Owens and Mabel E. Perry, executrix of the Estate of J. F. Owens,
deceased, T. E. Perry and Mabel E. Perry, and H. A. Fleming and W. S. Fleming
having, with the approval of this Court, filed complaints in intervention in
said cause; said cause having been referred to the Division of Water Resources
of the Department of Public Works, State of California to investigate,

determine and report upon all the physical facts involved and the duty of water required for the various uses involved and seasonably to report to the Court thereon, said reference having been made by an order of this Court, dated May 17, 1932, under authority of law as conferred by Section 24 of the Water Commission Act of the State of California, Statutes of 1913, Chapter 586, as amended; said Division of Water Resources having made its investigation and having announced its report in the form of a draft; notice of said draft and a copy thereof having been mailed by said referee to the parties or their attorneys; plaintiff Charles M. Oliver and intervenors, George H. Owens and Ethyl D. Cundiff having filed objections to said draft of report and the time for filing objections thereto having thereafter expired; due consideration having been given by said referee to said objections so filed; said referee having filed its report herein including three hydrographic reports and a map showing the entire area involved in said cause; said referee having given notice by mail of the filing of its report to the parties or their attorneys and the time for filing exceptions thereto having thereafter expired; exceptions to said report of referee having thereafter been filed by plaintiff Charles M. Oliver; said exceptions having, for good cause shown, been considered by this Court; said cause came on regularly for re-trial before this Court sitting without a jury, a trial by jury having been duly waived, on the 15th day of November, 1937, and was duly and regularly continued to April 11, 1938 for further hearing and trial; Fontaine Johnson and Herbert P. Welch appearing as counsel for plaintiff Charles M. Oliver; Carr and Kennedy and Charles Lederer appearing as counsel for defendants H. M. Fleming, Morris Dick, Sarah M. Keller, Rhesa Dick, Grover C. Dick, Thomas M. Dick, and Mrs. John Dick Smith and intervenors H. A. Fleming and W. S. Fleming; C. S. Baldwin appearing as counsel for intervenors George H. Owens, Ethyl D. Cundiff, Thomas E. Perry and Mabel E. Perry; J. S. Henderson appearing as counsel for defendant Charley C. Larkin; the Court having heretofore made and entered orders substituting parties herein as follows: (a) H. M. Fleming for

defendant Isaac Robnett, (b) defendant Charley C. Larkin for defendant Ellen Larkin, (c) George H. Owens and Ethyl D. Cundiff for intervenors Ida L. Owens and Mabel E. Perry, executrix of the Estate of J. F. Owens, deceased, (d) Grover C. Dick, Annie Rice, Thomas M. Dick, Morris Dick, John D. Dick, Rhesa E. Dick, and Sadie M. Keller for defendant Ameria C. Dick, and (e) Mrs. John Dick Smith for defendant John D. Dick; it appearing to the Court that Sadie M. Keller and Sarah M. Keller are one and the same person and that defendant Annie Rice has no interest in any water right from Cottonwood Creek and has no interest in any of the lands involved in said cause; and evidence both oral and documentary having been introduced, the evidence having been closed, the cause having been submitted and the Court having made and filed herein its findings of fact and conclusions of law, now therefore in accordance with said findings of fact and conclusions of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. There is in said Modoc County a natural stream of water known as and called "Cottonwood Creek", which said stream arises on the western slope of the Warner Range of Mountains in the northerly portion of said county, and flows thence in a general westerly direction into Goose Lake, and said stream so flows between well defined banks in a well defined channel to, upon, and across the lands of defendant Charley C. Larkin, thence to, upon, and across that portion of the lands of defendant H. M. Fleming hereinafter designated as the Riparian Ranch, thence to, upon, and across the lands of plaintiff Charles M. Oliver and that portion of the lands of intervenors George H. Owens and Ethyl D. Cundiff hereinafter designated as the Riparian Tract, all of said lands being hereinafter described in paragraph 2; and said stream, in its natural channel, flows north of all other lands involved in said cause as hereinafter described in said paragraph 2.

2. The party plaintiff, parties defendant and intervening parties in said cause are the owners of the lands described in their respective pleadings, and as amended and pleaded by them; the respective parties are the owners of the acreages and of all the lands embraced in the legal subdivisions herein-

after set forth in this paragraph under their respective names; and that said lands and acreages are depicted on the map herein referred to as the "Division of Water Resources Map", which map was prepared by said referee in this cause from its surveys made in 1932, and is entitled, "Cottonwood Creek Showing Diversion Systems and Irrigated Lands", and is dated 1932, which map has been filed in said cause, and by this reference thereto, is made part and parcel of this decree with like effect as if incorporated herein. The description of the lands irrigated from said Cottonwood Creek and the respective owners thereof are as follows:

Grover C. Dick, Morris Dick, Thomas M. Dick, Rhesa E. Dick, Mrs. John Dick Smith, and Sarah M. Keller

35.7 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
4.3 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
2.5 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
8.3 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
50.8 acres - total

Charley C. Larkin

37.5 acres in Lot 3 of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
26.9 acres in Lot 2 of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
10.2 acres in Lot 1 of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
4.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
78.6 acres - total

H. A. Fleming and W. S. Fleming

40.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
40.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B. & M.
40.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B. & M.
30.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B. & M.
150.0 acres - total

H. M. Fleming (Riparian Ranch)

21.1 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
15.8 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
14.5 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
5.7 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
57.1 acres - total

H. M. Fleming (Robnett Home Place)

39.8 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B. & M.
29.9 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B. & M.
39.4 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B. & M.
39.2 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B. & M.
3.4 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 47 N., R. 14 E., M.D.B. & M.
151.7 acres - total

Charles M. Oliver

39.6 acres in $SE\frac{1}{4} NE\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
23.0 acres in $N\frac{1}{2} SW\frac{1}{4} NE\frac{1}{4}$ and $N\frac{1}{2} S\frac{1}{2} SW\frac{1}{4} NE\frac{1}{4}$ of Section 2, T. 47 N.,
R. 14 E., M.D.B. & M.
28.0 acres in $N\frac{1}{2} SE\frac{1}{4} NW\frac{1}{4}$ and $N\frac{1}{2} S\frac{1}{2} SE\frac{1}{4} NW\frac{1}{4}$ of Section 2, T. 47 N.,
R. 14 E., M.D.B. & M.
38.7 acres in Lot 2 of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
38.4 acres in Lot 3 of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
15.3 acres in Lot 4 of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
23.0 acres in $N\frac{1}{2} S\frac{1}{2}$ Lot 5 and $N\frac{1}{2}$ Lot 5 of Section 2, T. 47 N.,
R. 14 E., M.D.B. & M.
206.0 acres - total

George H. Owens and Ethyl D. Cundiff (Riparian Tract)

9.9 acres in $S\frac{1}{2} S\frac{1}{2}$ Lot 5 of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
6.9 acres in $S\frac{1}{2} S\frac{1}{2} SE\frac{1}{4} NW\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
9.1 acres in $S\frac{1}{2} S\frac{1}{2} SW\frac{1}{4} NE\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
25.9 acres - total

George H. Owens and Ethyl D. Cundiff

37.8 acres in $NW\frac{1}{4} SW\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
19.0 acres in $NE\frac{1}{4} SW\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
3.9 acres in $NW\frac{1}{4} SE\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
60.7 acres - total

T. E. Perry and Mabel E. Perry

21.1 acres in $SE\frac{1}{4} SE\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
14.3 acres in $SW\frac{1}{4} SE\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
42.9 acres in $SE\frac{1}{4} SW\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
78.3 acres - total

3. The party plaintiff, parties defendant and intervening parties in said cause are the owners of, or interested in, the ditches, conduits and other means of diversion described in their respective pleadings, and as depicted on said Division of Water Resources Map and are entitled to divert water through said means of diversion as hereinafter named in this paragraph at the respective points of diversion thereof from said Cottonwood Creek as hereinafter numbered and described in this paragraph under their respective names, as follows:

Grover C. Dick, Morris Dick, Thomas M. Dick, Rhessa E. Dick, Mrs. John Dick Smith and Sarah M. Keller

Robnett Ditch, designated on said Division of Water Resources Map as Diversion 3, diverting at a point which bears approximately $S 18^{\circ} 0' W$, approximately 1350 feet distant from the northeast corner of Section 1,

T. 47 N., R. 14 E., M.D.B. & M., and being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 1
Charley C. Larkin

Larkin Garden Ditch, designated on said Division of Water Resources Map as Diversion 1, diverting at a point which bears approximately S 1° 30' W, approximately 1175 feet distant from the northeast corner of Section 1, T. 47 N., R. 14 E., M.D.B. & M., and being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 1; and Larkin Main Ditch, designated on said Division of Water Resources Map as Diversion 2, diverting at a point which bears approximately S 18° 0' W, approximately 1320 feet distant from the northeast corner of Section 1, T. 47 N., R. 14 E., M.D.B. & M., and being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 1; and Robnett Ditch as hereinbefore numbered and described in this paragraph.

H. A. Fleming and W. S. Fleming

Robnett Ditch as hereinbefore numbered and described in this paragraph.

H. M. Fleming

Robnett Ditch as hereinbefore numbered and described in this paragraph; and Robnett Field Ditch, designated on said Division of Water Resources Map as Diversion 5, diverting at a point which bears approximately S 55° 30' E, approximately 3200 feet distant from the northeast corner of Section 1, T. 47 N., R. 14 E., M.D.B. & M., and being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 1.

Charles M. Oliver

Bissell Ditch, designated on said Division of Water Resources Map as Diversion 4, diverting at a point which bears approximately S 32° 30' W, approximately 1550 feet distant from the northeast corner of Section 1, T. 47 N., R. 14 E., M.D.B. & M., and being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 1; Oliver North Ditch, designated on said Division of Water Resources Map as Diversion 7, diverting at a point which bears approximately S 1° 30' W, approximately 2180 feet distant from the northeast corner of Section 2, T. 47 N., R. 14 E., M.D.B. & M., and being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 2; Oliver South Ditch, designated on said Division of Water Resources Map as Diversion 8, diverting at a point which bears approximately S 1° 30' W,

approximately 2190 feet distant from the northeast corner of Section 2,
T. 47 N., R. 14 E., M.D.B. & M., and being within the $SE\frac{1}{4} NE\frac{1}{4}$ of said Section 2;
Oliver Dam Ditch, designated on said Division of Water Resources Map as
Diversion 9, diverting at a point which bears approximately S $51^{\circ} 0' W$,
approximately 3235 feet distant from the northeast corner of Section 2,
T. 47 N., R. 14 E., M.D.B. & M., and being within the $SW\frac{1}{4} NE\frac{1}{4}$ of said Section 2;
Oliver Upper Meadow Ditch, designated on said Division of Water Resources Map
as Diversion 10, diverting at a point which bears approximately S $67^{\circ} 30' W$,
approximately 3780 feet distant from the northeast corner of Section 2,
T. 47 N., R. 14 E., M.D.B. & M., and being within the $SE\frac{1}{4} NW\frac{1}{4}$ of said Section 2;
and

Oliver Lower Meadow Ditch, designated on said Division of Water Resources Map
as Diversion 11, diverting at a point which bears approximately S $75^{\circ} 30' W$,
approximately 4260 feet distant from the northeast corner of Section 2,
T. 47 N., R. 14 E., M.D.B. & M., and being within Lot 4 of said Section 2.
George H. Owens and Ethyl D. Cundiff

Owens-Perry Ditch, designated on said Division of Water Resources Map
as Diversion 6, diverting at a point which bears approximately S $34^{\circ} 30' E$,
approximately 2420 feet distant from the northwest corner of Section 1,
T. 47 N., R. 14 E., M.D.B. & M., and being within the $SE\frac{1}{4} NW\frac{1}{4}$ of said Section 1.
T. E. Perry and Mabel E. Perry

Robnett Ditch and Owens-Perry Ditch as said ditches are hereinbefore
numbered and described in this paragraph.

4. Plaintiff Charles M. Oliver and defendant H. M. Fleming are
entitled to divert from the waters of Cottonwood Creek, as prior appropriators,
under first rights superior in priority and in right to all other rights to
divert from said creek, for continuous usage without regard to season, except
as otherwise hereinafter provided in paragraph 12, for domestic, stock-watering
and irrigation purposes, through the ditches and in the amounts set forth
opposite their respective names as follows:

<u>Name</u>	<u>Ditch</u>	<u>Amount--Cubic Feet per Second</u>
Charles M. Oliver	Bissell	1.00
H. M. Fleming	Robnett	2.60

said amounts of water to be measured at the respective points of diversion of said ditches as hereinbefore described in paragraph 3, and said amounts of water, or as much thereof as are directly applied to beneficial use for said purposes, are to be used on their respective lands described under their respective names as follows:

Charles M. Oliver

39.6 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
 23.0 acres in N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E.,
 M.D.B.& M.
 28.0 acres in N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E.,
 M.D.B.& M.
 38.7 acres in Lot 2 of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
 38.4 acres in Lot 3 of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
 15.3 acres in Lot 4 of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
 23.0 acres in N $\frac{1}{2}$ S $\frac{1}{2}$ Lot 5 and N $\frac{1}{2}$ Lot 5 of Section 2, T. 47 N., R. 14 E.,
 M.D.B.& M.

206.0 acres - total

H. M. Fleming

39.8 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B.& M.
 29.9 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B.& M.
 39.4 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B.& M.
 39.2 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B.& M.
3.4 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T. 47 N., R. 14 E., M.D.B.& M.
151.7 acres - total

and said rights hereinbefore defined in this paragraph are equal in priority and correlative in right.

5. Subject to the rights hereinbefore defined in paragraph 4, defendant Charley C. Larkin is entitled to divert from the waters of Cottonwood Creek, as an adverse user, under a second right superior in priority and in right to all other rights hereinafter defined, for continuous usage without regard to season, except as otherwise hereinafter provided in paragraph 12, for garden and orchard irrigation and domestic purposes, through the Larkin Garden Ditch, 0.25 cubic foot per second, said amount of water to be measured at the point of diversion of said ditch as hereinbefore described in paragraph 3, and said amount of water, or as much thereof as is directly applied to beneficial use, is to be used on his lands described as follows:

8.8 acres in Lot 1 of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
4.0 acres in Lot 2 of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
12.8 acres - total

6. Subject to the rights hereinbefore defined in paragraphs 4 and 5, defendants Grover C. Dick, Morris Dick, Thomas M. Dick, Rhesa E. Dick, Mrs. John Dick Smith, and Sarah M. Keller, and intervenors T. E. Perry and Mabel E. Perry are entitled to divert from the waters of Cottonwood Creek, as adverse users, under third rights superior in priority and in right to all other rights hereinafter defined, for continuous usage without regard to season, except as otherwise hereinafter provided in paragraph 12, for domestic, stock-watering and irrigation purposes, through the Robnett Ditch, in the amounts set forth opposite their respective names as follows:

<u>Name</u>	<u>Amount</u> <u>Cubic Feet per Second</u>
Grover C. Dick, Morris Dick, Thomas M. Dick, Rhesa E. Dick, Mrs. John Dick Smith, and Sarah M. Keller	0.85
T. E. Perry and Mabel E. Perry	0.35

said amounts of water to be measured at the point of diversion of said Robnett Ditch as hereinbefore described in paragraph 3, and said amounts of water, or as much thereof as are directly applied to beneficial use for said purposes, are to be used first on the lands of said Grover C. Dick, Morris Dick, Thomas M. Dick, Rhesa E. Dick, Mrs. John Dick Smith, and Sarah M. Keller described as follows:

35.7 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
4.3 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
2.5 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
8.3 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B. & M.
50.8 acres - total

and any drainage from the lands above described in this paragraph is to be allowed to flow unobstructed for use on lands of said T. E. Perry and Mabel E. Perry described as follows:

21.1 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B. & M.
21.1 acres - total

5.05

7. Subject to the rights hereinbefore defined in paragraphs 4, 5 and 6, plaintiff Charles M. Oliver, defendants H. M. Fleming and Charley C. Larkin, and intervenors George H. Owens and Ethyl D. Cundiff are entitled to divert from the waters of Cottonwood Creek, as riparian proprietors, under fourth rights superior in priority and in right to all other rights hereinafter defined, for continuous usage without regard to season, except as otherwise hereinafter provided in paragraph 12, for domestic, stock-watering and irrigation purposes, through the ditches and in the amounts set forth opposite their respective names as follows:

<u>Name</u>	<u>Ditch</u>	<u>Amount Cubic Feet per Second</u>
Charles M. Oliver	Bissell, Oliver North Oliver South, Oliver Dam, Oliver Upper Meadow, and Oliver Lower Meadow	3.10
H. M. Fleming	Robnett and Robnett Field	1.15
Charley C. Larkin	Larkin Main and Robnett	1.35
George H. Owens and Ethyl D. Cundiff	Owens-Perry	0.50

said amounts of water to be measured at the respective points of diversion of said ditches as hereinbefore described in paragraph 3, and said amounts of water, or as much thereof as are directly applied to beneficial use for said purposes, are to be used on their respective lands described under their names as follows:

Charles M. Oliver

- 39.6 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
- 23.0 acres in N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
- 28.0 acres in N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
- 38.7 acres in Lot 2 of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
- 38.4 acres in Lot 3 of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
- 15.3 acres in Lot 4 of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
- 23.0 acres in N $\frac{1}{2}$ S $\frac{1}{2}$ Lot 5 and N $\frac{1}{2}$ Lot 5 of Section 2, T. 47 N., R. 14 E., M.D.B.& M.

206.0 acres - total

H. M. Fleming

21.1 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B.& M.
15.8 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B.& M.
14.5 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B.& M.
5.7 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B.& M.
57.1 acres - total

Charley C. Larkin

1.4 acres in Lot 1 of Section 1, T. 47 N., R. 14 E., M.D.B.& M.
22.9 acres in Lot 2 of Section 1, T. 47 N., R. 14 E., M.D.B.& M.
37.5 acres in Lot 3 of Section 1, T. 47 N., R. 14 E., M.D.B.& M.
4.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T. 47 N., R. 14 E., M.D.B.& M.
65.8 acres - total

George H. Owens and Ethyl D. Cundiff

9.9 acres in S $\frac{1}{2}$ S $\frac{1}{2}$ Lot 5 of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
6.9 acres in S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
9.1 acres in S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
25.9 acres - total

and said rights hereinbefore defined in this paragraph are equal in priority and correlative in right.

8. Subject to the rights hereinbefore defined in paragraphs 4 to 7, inclusive, intervenors T. E. Perry and Mabel E. Perry, and George H. Owens and Ethyl D. Cundiff are entitled to divert from the waters of Cottonwood Creek, as appropriators, under fifth rights superior in priority and in right to the right hereinafter defined in paragraph 9, for continuous usage without regard to season, except as otherwise hereinafter provided in paragraph 12, for irrigation purposes through the Owens-Perry Ditch in the amounts set forth opposite their respective names as follows:

<u>Name</u>	<u>Amount</u> <u>Cubic Feet per Second</u>
T. E. Perry and Mabel E. Perry	1.10
George H. Owens and Ethyl D. Cundiff	1.10

said amounts of water to be measured at the point of diversion of said ditch as hereinbefore described in paragraph 3, and said amounts of water, or as much thereof as are directly applied to beneficial use for said purpose, are to be used on their respective lands described under their respective names as follows:

T. E. Perry and Mabel E. Perry

14.3 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
42.9 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
57.2 acres - total

George H. Owens and Ethyl D. Cundiff

37.8 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
19.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
3.9 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
60.7 acres - total

and said rights hereinbefore defined in this paragraph are equal in priority and correlative in right.

9. Subject to all other rights to divert from Cottonwood Creek as hereinbefore defined in paragraphs 4 to 8, inclusive, intervenors H. A. Fleming and W. S. Fleming are entitled to divert from the waters of said Cottonwood Creek, as appropriators, under a sixth right, for continuous usage without regard to season, except as otherwise hereinafter provided in paragraph 12, for irrigation purposes through the Robnett Ditch, 2.00 cubic feet per second, said amount of water to be measured at the point of diversion of said ditch as hereinbefore described in paragraph 3, and said amount of water, or as much thereof as is directly applied to beneficial use, is to be used on their lands described as follows:

40.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M.
40.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B.& M.
40.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B.& M.
30.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T. 47 N., R. 14 E., M.D.B.& M.
150.0 acres - total

10. Intervenors H. A. Fleming and W. S. Fleming are entitled to receive all surface drainage from the lands in the Robnett Home Place, as hereinbefore described in paragraph 2 under the name of H. M. Fleming, naturally reaching a line west of a point located at the head of the Perry Tap on the Pleasant Lateral Ditch, which is described as at a point approximately 190 yards due east of the Southwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T. 47 N., R. 14 E., M.D.B.& M. for irrigation purposes on their lands as hereinbefore described in paragraph 9; intervenors T. E. Perry and Mabel E. Perry are entitled to receive 0.10 cubic foot per second from the surface drainage from

the lands in said Robnett Home Place naturally reaching a line due east of said Perry Tap for irrigation purposes on their lands hereinbefore described under their names in paragraph 8; and said H. A. Fleming and W. S. Fleming are entitled to receive all surface drainage reaching the westerly boundary of said lands of T. E. Perry and Mabel E. Perry for irrigation purposes on the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 2 belong to said H. A. Fleming and W. S. Fleming.

11. The amounts of water that the parties hereto are found entitled to divert from Cottonwood Creek as hereinbefore set forth in paragraphs 4 to 9, inclusive, are sufficient and adequate to properly supply the respective requirements of said parties for use upon their respective acreages for said purposes, and are all the waters reasonably necessary therefor.

12. Whenever the flow of Cottonwood Creek has diminished to such a stage that due to channel losses or conveyance losses any of the allotments of water therefrom, or prorrations thereof, as above set forth in paragraphs 4 to 9, inclusive, cannot be delivered to the specified places of use through the ditches designated as the means of diversion in said paragraphs 4 to 9, inclusive, or through any improved method of conveyance then in use, then the owner or owners of such an allotment or allotments shall not be entitled to divert any water from said creek at such times and the remaining parties who are entitled to divert from said creek shall be entitled at such times to divert such an allotment or allotments in accordance with the order of their respective priorities as above set forth in said paragraphs 4 to 9, inclusive.

13. The costs of suit herein shall be apportioned among the various parties to the action in accordance with the stipulation at the time of trial as to the manner of apportionment thereof.

14. That each and every party to this action, his or her agents, successors, grantees and assigns, be and they are hereby perpetually enjoined and restrained from doing anything in violation of the terms or provisions of this decree, or from diverting any water from said Cottonwood Creek at any time in violation of the terms hereof, or from diverting any of such water at any time in excess of a quantity of water reasonably necessary for and being

put to beneficial use, or from doing anything, directly or indirectly, that will obstruct or interfere with any right of another in this decree adjudged and determined.

15. That action against Annie Rice be and is hereby dismissed.

16. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court retains continuing jurisdiction of the parties and subject matter of this action for the purpose of enforcing its judgments, orders and decrees.

17. IT IS FINALLY ORDERED, ADJUDGED AND DECREED that the said Division of Water Resources have judgment against the plaintiff Charles M. Oliver for his apportionment of the expenses of referee in the amount of \$116.78.

Dated this 3rd day of May, A. D. 1940.

/s/ BEN V. CURLER
Judge of the Superior Court

Entered: Judgment Book 7, page 348 on May 6, 1940.